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March 21, 2008

## UTAH BULLETIN UT300-08-13

### **SUBJECT: LTP – FY2008 CONTRACT CANCELLATION / TERMINATION AND COST RECOVERY PROCEDURES**

Purpose: The purpose of this bulletin is to clarify procedures for cancelling/terminating contracts and to reinforce the cost recovery policy.

Expiration Date: December 31, 2008

In FY2008, NRCS Utah will continue to cancel, terminate, or modify all inactive contracts, contracts behind schedule, and contracts in violation. In addition to contract inactivity, unspent obligations and other related issues must also be addressed. Please carefully review all contracts and the national procedures for CPC cancellation or termination as well as cost recovery policies (CPM 512.57, 512.58, and appropriate program manuals and appendices).

#### **Recovery of Costs and Liquidated Damages**

Refer to CPM Part 512.58, the CPC Appendix, and Attachment A to this bulletin for additional policy guidance on cost-recovery. **The State Conservationist (STC) has not delegated the decision making authority for “waivers” of cost-recovery.** Participants must request a waiver in writing and provide rationale to support the waiver. Participant requests **MUST** be supported by clear and compelling evidence of either a good faith effort to apply the terms and conditions of the contract, or hardships beyond the control of the participant that were not pre-existing at the time of application or contract obligation.

District Conservationists (DCs) will review participant requests, update status in protracts, and provide a recommendation to the STC. Participant requests to cancel will be forwarded to the STC within 10 working days of receipt by the DC. The STC shall respond to participant requests within 30 working days of State Office receipt.

#### **Contract Cancellation or Termination**

The STC may cancel or terminate a contract when justified by the documentation provided by the participant and DC, with respect to a participant’s interest if the land becomes ineligible due to violation of contract provisions, failure to implement the contracted practices, operation and maintenance provisions, misrepresentation, scheme-and-device, and fraud.

Following are the procedures for canceling/terminating contracts:

1. DCs shall submit all documentation (see below) to the STC using the following process:
  - DC shall submit all required documentation to Area Program Specialist (APS) for review.
  - APSs shall review, sign, and submit the request and all documentation to their respective Assistant State Conservationists for Field Operations (ASTC-FO) for concurrence.
  - ASTC-FOs shall review and sign the request and submit all the required documentation to the Assistant State Conservationist - Programs (ASTC-P) for review.
  - The STC will, in writing, inform the participant of all contract cancellations/terminations decisions (including a determination of cost recovery/liquidated damages), with copies to the DC and ASTC-FO.
  - DCs shall, upon receiving a cancellation request from the participant, change the contract status in protracts to **Cancelled** and write “cancelled” and the date of cancellation on all appropriate documents in the case file.
  - DCs shall, upon receiving notice from the State Conservationist, change the status in protracts to **Terminated** and write “terminated” and date of termination on all appropriate documents in the case file.
2. To ensure accountability and tracking of all cancellations/terminations the DC, APS, ASTC-FO, and Resource Conservationist - Program will record all actions taken, as appropriate, on the spreadsheet located on the state office shared drive (S:\NRCS\440 - PGM – Programs).
3. **If the STC does not concur with the DC’s recommendation, the ASTC-P will discuss the reason for the change via a teleconference with the ASTC-FO and DC, prior to issuing the decision in writing.**

#### Documentation Required

#### **When participants request cancellation:**

1. Letter from the participant to the DC requesting cancellation, including detailed reason(s) why they are requesting cancellation, and, if applicable, provide information on availability of any successors in interest. See *“Recovery of Costs and Liquidated Damages,”* page one.
2. Letter from DC to STC stating:
  - Participant name
  - Participant address
  - Contract number
  - Summary of practices installed to date, if any, including cost-share amount paid
  - Demonstration of “good faith” by participant to comply
  - Amount of “slippage”
  - Recommendation of recovery costs due NRCS (see CPM 512.58, CCC-1200/1202 appendix and as determined by attachment A)

3. Copy of CCC-1200/1202 Appendix signed and dated by participant.
4. APS concurrence and signature is required on all cancellation requests.
5. ASTC – FO’s concurrence and signature is required on all cancellation requests.
6. Additional information as requested by the State Conservationist.

**When termination is initiated by NRCS:**

1. Letter from DC to STC stating:
  - Participant name
  - Participant address
  - Contract number
  - Date of the technical determination of contract violation
  - Reason for termination
  - Summary of practices installed to date, if any, including cost-share amount paid
  - Amount of “slippage”
  - Recovery costs due NRCS (see CPM 512.58, CCC-1200/1202 appendix and as determined by attachment A)
2. CCC-1200/1202 Appendix (copy) signed and dated.
3. Copy of LTP-013 Status Review if available (signed by participant).
4. APS and ASTC-FO concurrence and signature is required on all termination requests.
5. Additional documentation as requested by the State Conservationist.

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SYLVIA A. GILLEN  
State Conservationist

Attachment A  
Fact Sheet

Distribution: ASTC-FO, DC, APS